



[Billing Code: 6750-01S]

FEDERAL TRADE COMMISSION

16 CFR Part 453

Funeral Industry Practices Rule

AGENCY: Federal Trade Commission.

ACTION: Regulatory review; request for comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is requesting public comment on its Trade Regulation Rule entitled “Funeral Industry Practices Rule” (“Funeral Rule” or “Rule”). The Rule defines unfair and deceptive practices in the sale of funeral goods and services and prescribes preventive requirements to protect against these practices. The Commission is soliciting comments about the efficiency, costs, benefits, and regulatory impact of the Rule as part of its systematic review of all current Commission regulations and guides. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Rule.

DATES: Written comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Instructions for Submitting Comments part of the

SUPPLEMENTARY INFORMATION section below. Write “Funeral Rule Regulatory Review, 16 CFR Part 453, Project No. P034410,” on your comment, and file your comment online through <https://www.regulations.gov>. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B),

Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Patti Poss (202-326-2413), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, pposs@ftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Funeral Rule pursuant to its authority under Sections 5 and 18 of the Federal Trade Commission Act to proscribe unfair or deceptive acts or practices.¹ The Funeral Rule's goal is to lower barriers to price competition in the funeral goods and services market and to facilitate informed consumer choice.² The Rule helps to achieve these goals by ensuring that: (1) consumers have access to sufficient information to permit them to make informed decisions; (2) consumers are not required to purchase goods and services that they do not want and are not required by law to purchase; and (3) misrepresentations are not used to influence consumers' decisions.³

When it promulgated the Funeral Rule, the Commission recognized that the arrangement of a funeral is an important financial transaction for consumers, with unique

¹ Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce." Section 18 of the FTC Act, 15 U.S.C. 57a, permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5.

² Original Funeral Rule Statement of Basis and Purpose, 47 FR 42260 (Sept. 24, 1982).

³ *Id.*

characteristics that reduce the ability of consumers to make careful, informed purchase decisions. The Commission noted that funeral arrangement decisions must often be made while under the emotional strain of bereavement, and that consumers often lack familiarity with the funeral transaction. Further, “consumers are called upon to make several important and potentially costly decisions under tight time constraints.”⁴

The Commission issued the Funeral Rule on September 24, 1982, and it became fully effective on April 30, 1984.⁵ The original Rule included a provision requiring a regulatory review of the Rule no later than four years after its effective date to determine whether it should be amended or terminated.⁶ The Rule was amended effective July 19, 1994,⁷ and the United States Court of Appeals for the Third Circuit upheld the amended Rule following a challenge by funeral industry groups.⁸

The Rule specifies that it is an unfair or deceptive act or practice for a funeral provider to: (1) fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods or services used in connection with the disposition of deceased human remains; (2) require consumers to purchase a casket for direct cremation; (3) condition the furnishing of any funeral good or funeral service upon the purchase of any other funeral good or funeral service or charge a fee as a condition to furnishing any goods or services, such as a “casket handling” fee to consumers who

⁴ *Id.*

⁵ Certain portions of the Rule became effective on January 1, 1984 and others on April 30, 1984. 48 FR 45537, 45538 (Oct. 6, 1983); 49 FR 564 (Jan. 5, 1984). Several funeral providers challenged the Rule, but it was upheld by the Fourth Circuit. *Harry and Bryant Co. v. FTC*, 726 F.2d 993 (4th Cir.), *cert. denied*, 469 U.S. 820 (1984).

⁶ 16 CFR 453.10 (1982).

⁷ Amended Funeral Rule Statement of Basis and Purpose, 59 FR 1592 (Jan. 11, 1994).

⁸ *Pennsylvania Funeral Directors Ass’n, Inc. v. FTC*, 41 F.3d 81, 83 (3d Cir. 1994).

provide their own casket; or (4) embalm the deceased for a fee without authorization when embalming is not required by law.

The Rule also specifies that it is a deceptive act or practice for a funeral provider to misrepresent the legal or local cemetery requirements for: (1) embalming; (2) caskets in direct cremations; (3) outer burial containers; or (4) the purchase of any other funeral good or service. Further, the Rule prohibits misrepresentations that so-called “cash advance” items are provided to the consumer at the same price as that paid by the funeral provider, when that is not the case, or that any funeral goods or services will delay the natural decomposition of human remains for a long-term or indefinite time.

The Rule sets forth preventive requirements in the form of itemized price and information disclosures to ensure funeral providers do not engage in the unfair or deceptive acts or practices described above. First, the Rule requires funeral providers give persons inquiring about funeral goods or services a General Price List (“GPL”) to keep, which lists the goods and services they offer and their itemized prices, along with specific disclosures. Second, the Rule requires funeral providers show consumers a Casket Price List (“CPL”) identifying the caskets and alternative containers they carry, and an “Outer Burial Container Price List” (“OBCPL”) listing the vaults and grave liners they offer, along with specific disclosures.

On March 14, 2008, the Commission completed a second regulatory review (“2008 Review”), and concluded that the Rule was still needed and should be retained.⁹ The Commission also considered whether the Rule should be expanded to cover cemeteries, crematories and third-party sellers of caskets, monuments, and other funeral

⁹ 73 FR 13740 (Mar. 14, 2008).

goods. However, the evidence amassed in the regulatory review record was not indicative of a sufficiently widespread pattern of unfair or deceptive acts or practices to suggest that, even if the record were to be developed further, it would justify an amendment proceeding to expand the Rule to cover those additional death care businesses.¹⁰ The Commission likewise determined that an amendment proceeding was not warranted for other changes advocated by some of the public comments.¹¹

II. Regulatory Review of the Funeral Rule

The Commission reviews its rules and guides periodically to seek information about their costs and benefits, regulatory and economic impact, and general effectiveness in protecting consumers and helping industry to avoid deceptive or unfair practices.

These reviews assist the Commission in identifying rules and guides that warrant modification or rescission.

With this document, the Commission initiates a new review. The Commission solicits comments on, among other things: (1) the economic impact of, and the continuing need for, the Funeral Rule; (2) the Rule's benefits to consumers; (3) and the burden it places on industry members subject to the requirements, including small businesses.

III. Issues for Comment

¹⁰ 73 FR at 13742.

¹¹ *Id.* In particular, the Commission found insufficient evidence that: (1) widespread unfair or deceptive practices occur in the sale of pre-need funeral arrangements; (2) discount funeral packages offered in addition to itemized services cause consumer injury; and (3) adding additional disclosure requirements is necessary to remedy any widespread pattern of unfair practices. The Commission also determined that casket-handling fees should continue to be disallowed and that the provision allowing funeral providers to charge a single non-declinable fee for their basic services and overhead should be retained.

To aid commenters in submitting information, the Commission has prepared the following questions related to the Funeral Rule. The Commission seeks comments on these and any other issues related to the Rule's current requirements. In their replies, commenters should provide any available evidence, including empirical analyses, that supports their position.

A. General Regulatory Review Questions

1. *Need:* Is there a continuing need for the Rule? Why or why not?
2. *Benefits and Costs to Consumers:* What benefits has the Rule provided to consumers? Does the Rule impose any significant costs on consumers? Please quantify these benefits and costs wherever possible.
3. *Benefits and Costs to Industry Members:* What benefits has the Rule provided to businesses? Does the Rule impose any significant costs, including costs of compliance, on businesses, including small businesses? Please quantify these benefits and costs wherever possible.
4. *Impact on Information:* What impact has the Rule had on the flow of truthful information to consumers and on the flow of misleading information to consumers?
5. *Compliance:* Provide any evidence concerning the degree of industry compliance with the Rule. Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

6. *Possible Recommended Changes:* What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs? How would these modifications affect the costs and benefits of the Rule for consumers? How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?
7. *Unnecessary Provisions:* Provide any evidence, including empirical analyses, concerning whether any of the Rule's provisions are no longer necessary. Explain why these provisions are unnecessary.
8. *Additional Unfair or Deceptive Practices:* What potentially unfair or deceptive practices, not covered by the Rule, related to funeral goods and services, are occurring in the marketplace? Are any such practices prevalent in the market? If so, please describe such practices, including their impact on consumers. Provide any evidence, such as empirical data, consumer perception studies, or consumer reports, that demonstrates the extent of such practices. Provide any evidence that demonstrates whether such practices cause consumer injury, and quantify or estimate that injury if possible. With reference to such practices, should the Rule be modified? If so, why, and how? If not, why not?
9. *Product and Service Coverage:* Should the Commission broaden the Rule to include products or services not currently covered? Provide

any evidence that supports your position. What potentially unfair or deceptive practices related to products or services not covered by the Rule are occurring in the marketplace? Are any such practices prevalent in the market? If so, please describe such practices, including their impact on consumers. Provide any evidence, such as empirical data, consumer perception studies, or consumer reports, that demonstrates the extent of such practices. Provide any evidence that demonstrates whether such practices cause consumer injury, and quantify or estimate that injury if possible.

10. *Technological or Economic Changes:* What modifications, if any, should be made to the Rule to account for current or impending changes in technology or economic conditions? How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

11. *Conflicts with Other Requirements:* Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how? Provide any evidence that supports your position. With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not? Are there any Rule changes necessary to help state law enforcement agencies combat deceptive practices in the funeral services market?

12. *Other State or Local Laws or Regulations:* Are there state or local laws or regulations that lessen competition or impede consumer protection in the funeral-services market? Provide any evidence that supports your position. Should the Commission, through its advocacy work, encourage changes to these state or local laws or regulations? If so, what changes?

B. *Specific Questions Related to the Funeral Rule*

13. *Online and Electronic Price List Information:*

a. Should all funeral providers be required to post their itemized GPLs, CPLs or OBCPLs online? Why or why not?

b. Should funeral providers that have websites be required to post their itemized GPL, CPLs or OBCPLs online?

Alternatively, should they be required to provide an email address or other online mechanism for a website visitor to request the itemized price list information electronically and be subject to a time limit for replying to such requests? Why or why not?

c. If a funeral provider makes funeral arrangements without an in-person meeting (such as through a phone call, website, email, or text), should the funeral provider be required to provide an electronic copy of its itemized GPL, CPL, or OBCPL prior to a consumer making any selections? Why or why not?

- d. How would any of these suggested modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses? Please quantify or estimate these costs and benefits wherever possible.

14. *Casket and Outer Burial Container Information:*

- a. Should funeral providers be required to provide the CPL and OBCPL at the same time as the GPL? Why or why not?
- b. Should funeral providers be required to combine the casket and outer burial container price information and disclosures into the GPL? Why or why not?
- c. Should funeral providers be required to give consumers copies of their CPL and their OBCPL to keep, as they are required to do for the GPL? Why or why not?
- d. How would any of these suggested modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

15. *Price List Format:*

- a. Should funeral providers be required to provide their itemized price list information and disclosures in a standardized format? Why or why not? If so, how should a standardized format be developed and updated as the marketplace changes?

- b. Would a standardized format make it easier for consumers to review and compare itemized price list information from multiple providers? Why or why not?
- c. Would a uniform standardized format make it easier for funeral providers to prepare compliant itemized price lists, particularly small businesses? Why or why not?
- d. How would such modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?
- e. If the Rule was modified to include a standardized format for some or all of the itemized price list information and disclosures, should use of such a form be a safe harbor for the Rule's price list requirements for a funeral provider? Why or why not?

16. *Cremation and Cremation-Only Funeral Providers:*

- a. What percentage of consumers are choosing cremation each year? What is the annual dollar volume of sales for cremation services? How has that changed in the last five years, in the last ten years, and since the Rule was enacted?
- b. Should funeral providers be required to include the cost, or the range of costs, of any crematory fees that will be charged

by outside providers for cremation on their itemized price list?

Why or why not?

c. What percentage of funeral providers offer only cremation services without any burial options as a final disposition?

What percentage of funeral arrangements do these providers account for?

d. What, if any, modifications should be made in the Rule's itemized price list and disclosure requirements for funeral providers offering only cremation services as a final disposition? Why? How would such modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

17. New Forms of Cremation and Other Processes for Disposition:

a. What new forms of cremation and other processes for the disposition of human remains (such as chemical and organic reduction processes) are available in the U.S. market? What percentage of consumers are choosing these newer options? How has that changed in the last five years? How many providers offer these new types of disposition services and what is the annual dollar volume of sales?

b. What, if any, modifications should be made to the Rule in light of new and developing processes for human remains

disposition? Why? Should the definition of “cremation” in the Rule be amended to reflect these new processes? Why or why not? How would such modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

c. What types of alternative containers, if any, are needed or required for cremation and non-burial types of dispositions?

d. Does the Rule’s required disclosure regarding alternative containers need to be modified in light of new disposition options and the containers required? Why or why not?

18. *Non-Declinable Basic Services Fee*: Should the Rule permit a non-declinable basic services fee? Why or why not? Provide any evidence that supports your position.

19. *Reduced Basic Services Fee for Direct Cremation and Immediate Burial*

a. The Rule defines direct cremation as “a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.” Should the Rule be modified to expressly permit the addition of other goods or services for consumers choosing direct cremation or other newer forms of human remains disposition without requiring payment of the full basic services fee? For example, should the Rule permit a

funeral provider to charge a reduced basic services fee for a family choosing to have a loved one cremated but also wishing to have a limited viewing or visitation prior to or after the cremation?

- b. If changes should be made to the Rule to permit the addition of some goods or services to the direct cremation or newer forms of human remains disposition arrangements without requiring the funeral provider charge the full basic services fee, what additional goods or services should be included? Why?
- c. If changes should be made to the Rule to permit the addition of some goods or services to the direct cremation or newer forms of human remains disposition arrangements without requiring the funeral provider to charge the full basic services fee, should such a change also be made to permit limited additional goods or services to immediate burial arrangements? Why or why not?
- d. How would such modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

20. *Mandatory Disclosures:*

a. Do the existing mandatory disclosures in the Rule convey to consumers an accurate understanding of their choices? Should any of the mandatory disclosures be modified to improve clarity? Why or why not?

b. The current embalming disclosure begins with a caveat: “*Except in certain special cases*, embalming is not required by law.” The Rule provides that this italicized language “need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.” Should the Rule be changed to prohibit the inclusion of the “certain special cases” caveat in locations where the state or local law does not require embalming? Why or why not?

21. *Funeral Rule Offender Program:* What impact, if any, has the FTC’s policy of referring first-time violators to the National Funeral Directors Association’s Funeral Rule Offenders Program (FROP) for compliance review and training had on compliance with the Rule? Would publication of some or all of the names of those funeral providers participating in the FROP program increase compliance with the Rule? Would such publication benefit in other ways consumers shopping for funeral services? Why or why not?

22. *Cemeteries:*

- a. Should the Commission broaden the Rule to apply to cemeteries? Why or why not? Identify any specific practices by cemeteries, such as failing to provide itemized price information or making any misrepresentations to consumers, that an extension of the Rule could address to protect consumers. Provide any evidence that demonstrates whether such practices cause consumer injury and quantify or estimate that injury if possible. Are any such practices prevalent? If so, provide any evidence, such as empirical data, studies, or reports, which demonstrates the extent of such practices.
- b. What percentage of cemeteries are for-profit and therefore would fall within the FTC's jurisdiction? What, if any, concerns would arise if the Commission extended the Rule to for-profit cemeteries, but not non-profit cemeteries? What would the costs and benefits be to consumers and cemetery providers if the Commission extended the Rule to cemeteries? Provide evidence to support your conclusions.

IV. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Funeral Rule Regulatory Review, 16 CFR Part 310, Project No. P034410” on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it through <https://www.regulations.gov>, by following the instructions on the web-based form provided.

If you file your comment on paper, write “Funeral Rule Regulatory Review, 16 CFR Part 310, Project No. P034410” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website, <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your

comment should not include any sensitive personal information such as your or anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential" – as provided in § 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at <https://www.regulations.gov> – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this request for comment and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2020-02803 Filed: 2/13/2020 8:45 am; Publication Date: 2/14/2020]